% 10.10.2007

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Present: Mr. R.V. Sinha with Mr. A.S. Singh for the petitioners.

+ WP (C) No. 7475/2007 & CM No. 14234/2007

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The respondents herein, who are working as Office Superintendents (OS) in the CBI claimed parity with their counterparts, namely, Section Officers (SO) in the Central Secretariat Service (CSS) claiming non-functional pay-scale of Rs.8000-13500 granted to the SOs in CSS.

The case of the respondents before the Tribunal was that they were treated at par by all Pay Commissions and were historically enjoying the same pay-scale. It was also their case that even the 5th Pay Commission had recommended same pay-scales to both the Office Superintendent in CBI and Section Officer in CSS. It is only thereafter that the petitioners herein granted non-functional pay-scale, which is a higher scale of pay for selection grade for SOs in CSS. The Tribunal, while accepting the aforesaid submissions, allowed the OA.

We find from the judgment of the Tribunal that it has traced out the events historically for the post of OS in CBI and SOs in CSS and found that parity had always been maintained. This parity was a consequence of

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recommendation of the successive Pay Commissions and, thus, it was also not in dispute that the officers in both the organizations were discharging same type of functions. So much so, the Tribunal also found that the SOs working in CSS were earlier invariably posted as OS in CBI. Another important factor pointed out by the learned Tribunal is that the persons lower in rank, namely, Crime Assistants in CBI had claimed similar parity with their counterparts, i.e. Assistants in CSS, which was allowed by the Tribunal in their judgments given in OA Nos. 760/1998 & 144-A/1993 and this was accepted by the petitioners by implementing those judgments. The Tribunal has not only set out the various orders passed in various OAs from time to time touching upon the subject, it has also relied upon the Government's letter dated 24.11.1967 by which the posts in CBI were re-designated. This shows the equivalence of posts in the CBI and the CSS. The OSs of the CBI are at par with the SOs of CSS and Crime Assistants of CBI are at part with Assistants of CSS. The Tribunal, in these circumstances, referred to the principle of law laid down in ***Randhir Singh v. Union of India & Ors.,*** AIR 1982 SC 877 and ***Mewa Ram Kanojia v. AIIMS & Ors.,*** ATJ 1989 (1) 654 and held that the respondents were entitled to the same treatment.

We are of the opinion that the Tribunal rightly observed that the non-functional pay-scale (Selection Grade) is given for stagnation in service and has nothing to do with duties being performed. The following

observations of the Tribunal would show that the Tribunal was conscious of the fact that the grant of such pay-scales is normally an executive function, but in the instant case, where State itself had disturbed the equilibrium, the Court had the right to interfere :-

> "17. Tinkering with pay scales is not generally a matter in the purview of the courts. This has a domino effect and several equations are disturbed. It also leads to additional expenditure. Therefore, we should be wary of venturing into this field of activity and refrain from disturbing these delicate relationships. However, if the State itself disturbs these clear equations on extraneous considerations, the court can interfere. In the instant case the equation between the OSs of the CBI and SOs of the CSS has been upset by the Government granting to the latter the non-functional pay scale of Rs.8000-13500 on the recommendation of a High Level Committee. An expert body like the Pay Commission is not needed to right this wrong. We are confident that in view of the ratio laid down by the Hon'ble Supreme Court in Randhir Singh (supra) and Mewa Lal Kanojia case (supra), we can step in for righting the wrong. As far as the order in O.A. 102/2005 (Patna Bench) is concerned, we find that the case before the Patna Bench was totally different from the instant case as far as the facts and relief are concerned."

For all the foregoing reasons, we do not deem it to be a fit case for interference under Article 226 of the Constitution of India.

This writ petition is dismissed.

A.K. SIKRI, J.

VIPIN SANGHI, J.

October 10, 2007
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